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IN THE
COURT OF APPEALS OF INDIANA

RICHARD PARROTT,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0609-CR-780
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Linda Brown, Judge
Cause No. 49F10-0605-CM-79588

March 27, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Richard Parrott appeals his conviction and sentencing for Patronizing a Prostitute, as a Class A misdemeanor. Parrott raises three issues for our review:

1. Whether Parrott's trial counsel rendered ineffective assistance when she did not argue an entrapment defense on Parrott's behalf.

2. Whether the State produced sufficient evidence to support Parrott's conviction.

3. Whether the trial court abused its discretion when it required Parrott to participate in substance abuse evaluations and any necessary treatment as a condition of his probation.

We affirm.

FACTS AND PROCEDURAL HISTORY

On September 28, 2005, Indianapolis Police Officers Lynette Vega and Brian Spengler conducted "a reverse prostitution detail," in which Officer Vega posed as a prostitute while being visually and audibly recorded by Officer Spengler. Transcript at 16. At approximately 1:00 that afternoon, Parrott, while in his vehicle, approached Officer Vega at the northeast corner of the intersection of Morris and Belmont streets. Once Parrott pulled his vehicle over, Officer Vega asked him if he was interested in a "date," to which Parrott responded affirmatively. Id. at 19. After haggling over the price of fellatio, Vega told Parrott to pull into a nearby alleyway, where she would meet him. Parrott pulled into that alleyway and was promptly arrested by other officers.

On May 8, 2006, the State charged Parrott with patronizing a prostitute, as a Class A misdemeanor. Following a bench trial, on August 14 the court found Parrott guilty as

charged and sentenced him to 365 days in jail with 364 days suspended. Regarding the suspended portion of Parrott's sentence, the court stated:

> Sir, you will be on probation for [364] days with all the standard conditions and fees of probation. You are going to have to perform sixty [] hours of community service work. You are going to have the AID[]S testing and risk counseling while you are on probation. I am going to order substance abuse evaluation [sic] and treatment if necessary. I find that you've been arrested on three [] separate occasions since [1996] for possession of marijuana and I find a conviction for possession of marijuana in [1998] and a conviction for [Operating a Vehicle While Intoxicated], in [2001], so I am going to order substance abuse evaluation [sic] and treatment if necessary. You are to stay away from 2100 [West] Morris Street . . . .

Id. at 36-37. This appeal ensued.

DISCUSSION AND DECISION

Issue One: Effective Assistance of Counsel

Parrott first contends that he was denied the effective assistance of trial counsel. There is a strong presumption that counsel rendered effective assistance and made all significant decisions in the exercise of reasonable professional judgment, and the burden falls on the defendant to overcome that presumption. Gibson v. State, 709 N.E.2d 11, 13 (Ind. Ct. App. 1999), trans. denied. To make a successful ineffective assistance claim, a defendant must show that: (1) his attorney's performance fell below an objective standard of reasonableness as determined by prevailing professional norms; and (2) the lack of reasonable representation prejudiced him. Mays v. State, 719 N.E.2d 1263, 1265 (Ind. Ct. App. 1999) (citing Strickland v. Washington, 466 U.S. 668, 687 (1984)), trans. denied. Even if a defendant establishes that his attorney's acts or omissions were outside the wide range of competent professional assistance, he must also establish that but for

counsel's errors, there is a reasonable probability that the result of the proceeding would have been different. See Steele v. State, 536 N.E.2d 292, 293 (Ind. 1989).

Parrott asserts that he was denied the effective assistance of counsel for three reasons: (1) his trial counsel failed to raise the defense of entrapment; (2) the trial court denied his request for meaningful consultation with his counsel; and (3) the court denied his request to have his sister present at the hearing. We address each contention in turn.

Parrott first argues that his trial counsel was ineffective because she did not raise the defense of entrapment. But we afford great deference to counsel's discretion to choose strategy and tactics, and we strongly presume that counsel provided adequate assistance and exercised reasonable professional judgment in all significant decisions. Clancy v. State, 829 N.E.2d 203, 212 (Ind. Ct. App. 2005), trans. denied. And we have previously held that "whether or not to argue entrapment is a strategic decision which will not be second-guessed by a reviewing court." Crocker v. State, 563 N.E.2d 617, 624 (Ind. Ct. App. 1990) (citing Garcia v. State, 517 N.E.2d 402, 404 (Ind. 1988)), trans. denied. Here, the strategy of Parrott's trial counsel was to present evidence—namely, Parrott's own testimony—challenging the element of agreement in the crime of patronizing a prostitute. See Ind. Code § 35-45-4-3. Thus, we cannot say that Parrott's trial counsel was ineffective in not choosing to pursue the affirmative defense of entrapment. See also Timberlake v. State, 753 N.E.2d 591, 606 (Ind. 2001) ("Trial counsel's decision not to pursue a voluntary intoxication defense [and instead attempt to negate an element of the crime charged] was a reasonable professional decision to avoid seemingly inconsistent defenses.").

Parrott also contends that his trial counsel rendered ineffective assistance because she only had "a de minimis opportunity to consult" with him before trial. Appellant's Brief at 7. However, Parrott presents no evidence supporting the implication that his trial counsel was not properly prepared during trial. Hence, Parrott has waived that argument. See Ind. Appellate Rule 46(A)(8)(a).

Third, Parrott maintains that an error occurred when the trial court denied his request to have his sister present.[1] In support, Parrott refers to the following dialogue he had with the court:

> MR. PARROTT: (Inaudible) my sister has the paper work that shows that I am mentally incompetent.
>
> THE COURT: That you are mentally incompetent?
>
> MR. PARROTT: Um-huh.
>
> THE COURT: What's your diagnosis, what have you been diagnosed with, or what's the nature of your disability?
>
> MR. PARROTT: I'm not smart enough to handle my own personal affairs at this time.
>
> THE COURT: Well there are a lot of people that fall into that category. That doesn't mean that you aren't competent to stand trial, [s]ir. Do you understand what the charge is against you?
>
> MR. PARROTT: Yes[.]
>
> * * *
>
> THE COURT: Okay, so you understand what you have been charged with, right?
>
> MR. PARROTT: Yes.

[1] Parrott raises this argument in the section of his brief concerning effective assistance of counsel, and so we address it here as well.

Transcript at 6-7. That is, although he alleged incompetence, after a short discussion with the trial court Parrott confirmed that he understood the charges against him. On appeal, Parrott fails to present cogent reasoning as to what error, if any, occurred in that exchange with the court and how that error prejudiced him. As such, that argument is waived. See App. R. 46(A)(8)(a).

Issue Two: Sufficiency of the Evidence

Parrott next asserts that the State did not present sufficient evidence to support his conviction. When reviewing a claim of sufficiency of the evidence, we do not reweigh the evidence or judge the credibility of the witnesses. Jones v. State, 783 N.E.2d 1132, 1139 (Ind. 2003). We look only to the probative evidence supporting the verdict and the reasonable inferences that may be drawn from that evidence to determine whether a reasonable trier of fact could conclude the defendant was guilty beyond a reasonable doubt. Id. If there is substantial evidence of probative value to support the conviction, it will not be set aside. Id.

The crux of Parrott's argument on this issue is that "[t]here was no credible evidence that Mr. Parrott agreed to pay anything to the undercover officer." Appellant's Brief at 10. However, in her testimony Officer Vega stated, "I asked for twenty [] dollars and . . . he agreed." Transcript at 20. And Officer Brian Spengler, who was listening to Parrott's conversation with Officer Vega through a wire worn by the undercover officer, also testified that "she lowered the price down to twenty [] dollars and he agreed." Id. at 26. We decline Parrott's request that we reweigh that evidence or judge the credibility of those witnesses.

Likewise, Parrott's arguments that he only had $17.00 and therefore could not have agreed to pay Officer Vega $20.00, or that he is too mentally incompetent to reach a legal agreement, are unsupported. Indeed, the only evidence Parrott cites is his own self-serving testimony, which the trial court declined to follow. Again, we will not reassess that evidence. See Jones, 783 N.E.2d at 1139. And Parrott's contention that Officer Vega was required to actually meet him in the designated alley for the crime of patronizing a prostitute to have occurred plainly misreads the statute. See I.C. 35-45-4-3. The State presented sufficient evidence to convict Parrot of the charged offense.

Issue Three: Probation Conditions

Finally, Parrott maintains that the trial court imposed "an unreasonable condition of probation" when it required him to participate in substance abuse evaluation and treatment. "Probation is a 'matter of grace and a conditional liberty that is a favor, not a right.'" Johnson v. State, 659 N.E.2d 194, 198 (Ind. Ct. App. 1995) (quoting Million v. State, 646 N.E.2d 998, 1002 (Ind. Ct. App. 1995)). "Accordingly, a trial court is granted broad discretion in establishing conditions of probation in order to safeguard the general public and to create law[-]abiding citizens." Id. at 198-99. "This discretion is limited only by the principle that the conditions imposed must be reasonably related to the treatment of the defendant and the protection of public safety." Stott v. State, 822 N.E.2d 176, 180 (Ind. Ct. App. 2005), trans. denied.

As an initial matter, Parrott did not object to the conditions of his probation during sentencing and he therefore failed to preserve this issue for appeal. See id. Waiver notwithstanding, the trial court did not abuse its discretion. Parrott argues that, in order

for the trial court to impose the condition now complained of, substance abuse had to be related—seemingly, either by statute or facts—to the instant offense. But Parrott's argument is without citation to legal authority. See App. R. 46(A)(8)(a). Rather, as noted above, the trial court's discretion "is limited only by the principle that the conditions imposed must be reasonably related to the treatment of the defendant." Stott, 822 N.E.2d at 180. Here, Parrot had been arrested for possession of marijuana three times since 1996, he was convicted of possession of marijuana in 1998, and he was convicted for operating a vehicle while intoxicated in 2001. Thus, the trial court's ordered condition of probation was reasonably related to Parrott's treatment. On those facts, we cannot say that the trial court abused its discretion when it ordered substance abuse treatment as a condition of Parrott's probation.

Affirmed.

RILEY, J., and BARNES, J., concur.